(21,395.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 89.

SIMEON HALLOWELL

vs.

THE UNITED STATES.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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1 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1908.

No. 2489.

SIMEON HALLOWELL, Plaintiff in Error,
v.
THE UNITED STATES OF AMERICA, Defendant in Error.

The United States Circuit Court of Appeals for the Eighth Circuit, sitting in the City of St. Paul, Minnesota, on the 17th day of July, A. D. 1908, certifies that the record in the above entitled cause which is pending in such court upon a writ of error to review a judgment of conviction rendered against the plaintiff in error in the District Court of the United States for the District of Nebraska, discloses the following:

The indictment was returned November 16, 1905, and charged that the defendant, on August 1, 1905, in the District of Nebraska, introduced whiskey and other intoxicating liquors into a designated portion of the Indian country, in violation of the act of January 30, 1897 (29 Stat., ch. 109, p. 506). The defendant entered a plea of not guilty and the case was submitted to a jury upon the following agreed statement:

2 "That the defendant, Simeon Hallowell, an Omaha Indian, is and was on the first day of August, 1905, an allottee of land granted to him on the Omaha Indian Reservation, in Thurston County, Nebraska; that the allotment so made to him was made under the provisions of the Act of Congress of August 7, 1882 (22 Statutes at Large, 341); that the first or trust patent was issued to him in the year 1884, and that the twenty-five year period of the trust limitation has not yet expired; and that the fee title of the allotment so made to him is still held by the United States.

"That the defendant, Simeon Hallowell, on the first day of August, 1905, procured at a point outside the said reservation one-half gallon of whiskey which he took to his home, which was within the limits of the Omaha Indian Reservation, and upon an allotment which he had inherited and which allotment was made under the provisions of the act of Congress, of August 7, 1882, and the title of which is held by the Government, as the twenty-five year trust period has not expired. That he took the said whiskey into and upon this allotment for the purpose of drinking and using the same himself, and that he did drink said whiskey and did give some of it to his friends or visitors to drink.

"That the said Omaha Indian Reservation has been allotted practically in whole and that many of the allotments of deceased Omaha Indians have been sold to white people, under the provisions of the Act of Congress of May 27, 1902 (32 Statutes at Large, 245, 275); that within the original boundary limits of the Omaha

Indian Reservation, there are many tracts of land that have been sold, under the provisions of said act, to white persons who are the sole owners thereof, and that the full title to such lands has passed to the purchaser, the same as if a final patent without restriction upon alienation had been issued to the allottee.

"That all of the Omaha Indians who were living in the year 1884, and by law entitled to allotments, received them.

"That the Omaha Indian Reservation is within and a physical part of the organized territory of the State of Nebraska, as are also the allotments herein referred to, into and upon which the said defendant took said whiskey. That the Omaha Indians exercise the rights of citizenship, and participate in the County and State Government extending over said Omaha Indian Reservation, and over and upon the allotments herein referred to. That the defendant, Simeon Hallowell, has been on frequent occasions a Judge and Clerk of election, a Justice of the Peace, an Assessor, and a Director of the public school district in which he lives. That Omaha Indians have taken part in the State and County government, extending over the reservation, and have held the following offices in said county of Thurston, State of Nebraska: County Coroner, County Attorney, County Judge, Justice of the Peace, Constable, Road Overseer, Election officers, and have also served as jurors in the county and district Courts. Defendant is self-supporting as are most of said Indians. Some of them are engaged in business and most of them engaged in farming."

3 Over the defendant's objection that the matters recited in the agreed statement did not constitute or show an offense against the laws of the United States, the court instructed the jury that, if the matters so recited were true, the defendant was guilty of the offense charged. The defendant reserved an exception to this ruling. The jury found him guilty and judgment was thereupon pronounced against him.

And the Circuit Court of Appeals for the Eighth Circuit further certifies that the following question of law is presented to it in said cause, that a decision thereof is indispensable to the proper determination and disposition of the cause, and that to the end that the cause may be properly determined and disposed of, such court desires the instruction of the Supreme Court of the United States upon such question, to wit:

When, under the act of August 7, 1882 (22 Stat. 341), an allotment in severalty has been made to a tribal Indian out of lands in a tribal reservation in the State of Nebraska and a trust patent therefor has been issued to the allottee, and when the provisions of section 7 of the said act of August 7, 1882, and of section 6 of the act of February 8, 1887 (24 Stat. 388) have become effective as to such allottee, does the fact that the United States holds the land so allotted in trust for the allottee, or, in case of his decease, for his heirs, as provided in section 6 of the said act of August 7, 1882, enable, authorize or permit the United States to regulate or prohibit the introduction of intoxicating liquors upon such allotment during

the limited period for which the land so allotted is so held in trust by the United States?

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
JNO. F. PHILIPS,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

4 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing certificate in the case of Simeon Hallowell, Plaintiff in Error, vs. The United States of America, No. 2489, May Term, 1908, was duly filed and entered of record in my office by order of said Court, and as directed by said Court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, this twentieth day of July, A. D. 1908.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] U. S. Circuit Court of Appeals, Eighth Circuit. May Term, 1908. No. 2489. Simeon Hallowell, Plaintiff in Error, vs. United States of America. Certificate of Question to the Supreme Court of the United States. Filed Jul- 20, 1908. John D. Jordan, Clerk.

Endorsed on cover: File No. 21,395. U. S. Circuit Court of Appeals, 8th Circuit. Term No. 89. Simeon Hallowell vs. The United States. (Certificate.) Filed November 2d, 1908. File No 21,395.

Supreme Court of the United States

OCTOBER TERM, 1910.

SIMEON HALLOWELL,
Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.
} No. 89.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF CASE.

The record shows that one Simeon Hallowell, an Omaha Indian allottee, was indicted at the November, 1905, Term of the United States Court for the District of Nebraska for introducing liquor into the Indian Country, to wit: the Omaha Indian Reservation in Thurston County, Nebraska. That the said indictment is based upon the authority of the Act of Congress of January 30, 1897, 29 U. S. Sts. at L., page 509.

That the defendant was allotted land upon the Omaha Indian Reservation in Thurston County, Nebraska, under the provisions of the Act of Congress of August 7, 1882, 22 U. S. Sts., 341.

That the defendant procured liquor outside the original boundary limits of the Omaha Indian Reservation which he took upon the said Reservation, upon an allotment which had come to him by inheritance, and to which the trust title had not expired. That he drank some of it himself and gave some to his friends and visitors to drink.

The evidence shows that the whole of said Reservation has been allotted, and some tracts of land within the original boundary limits of said Reservation have been sold and title passed to white people. That the said Reservation is within and a part of the organized County of the State of Nebraska and that the Omaha Indians participate in the local county government, are voters, hold office, and that defendant has held various offices in said county organization as election officer, school officer, judge of election and justice of the peace. That the defendant has been a citizen of the United States and the State of Nebraska since the 29th day of December, 1884, and the complete jurisdiction of the State courts has been in force over said Reservation since said date. That practically all the Omaha Indians have been allotted. That in County affairs Indians have held the offices of County Judge, County Attorney, County Surveyor, County Commissioner, School Officers, Justices of the Peace, Constables, Road Overseers, and election officers, and jurors in the County and District Courts.

Plaintiff in Error was convicted and sentenced to pay a fine of $100 and costs of prosecution, and to be imprisoned in the county jail for sixty days, and until said fine and costs were paid.

ASSIGNMENTS OF ERROR.

1. That the acts charged against this defendant in the indictment found against him do not constitute a crime against the laws and authority of the United States.

2. That the Omaha Reservation, Omaha Indian Reservation in Thurston County, Nebraska, as charged in the indictment is not a place within the exclusive jurisdiction of the United States.

3. That the Court erred in giving the instruction as follows: "I assume the responsibility of saying to you that if the facts as agreed upon are true, such facts would constitute a violation of the law and the defendant would be guilty of the offense charged."

4. That the verdict, judgment and sentence are contrary to law.

5. That the Court is without jurisdiction of the offense charged in the indictment.

ARGUMENT.

It is claimed by the defendant that the territory referred to as the Omaha Indian Reservation in Thurston County, Nebraska, is within the sole and exclusive police power and jurisdiction of the State of Nebraska. That the United States of America did not when the State of Nebraska was admitted into the Union, reserve any police power or jurisdiction of the territory in question, and the State of Nebraska has not granted to the United States any such jurisdiction.

That the enabling act to the people of the Territory of Nebraska was passed on April 19, 1864, and is found in Volume 13, U. S. Statutes at Large, 47. The act was passed prior to the treaty of March 6, 1865. In reference to this territory the Supreme Court of the State of Nebraska has said as follows:

> "Now it is only within those particular places mentioned in the sixteenth subdivision of section eight, article one, of the Federal Constitution, that Congress can provide general police regulations for the government of the people. All other places are within the exclusive control of the State government, to whose legislation we must look for the punishment of all ordinary crimes and misdemeanors. From this it would seem clear that at the date of our admission into the Union, every portion of the territory within the prescribed boundaries of the State, the Indian Reservations included, became subject to its laws, and that for the punishment of all ordinary crimes, such as that under consideration, resort could alone be had to State laws, administered by State courts."
>
> Painter vs. Ives, 4 Nebraska, 128.

The same conclusion was reached in the case of *ex parte* Sloan, in which the Court said:

> "After a State has been admitted into the Union, the fact that within its boundaries land, the fee of which is in the United States, is set apart for an Indian Reservation is not enough of itself to give the United States Court jurisdiction to try a person for murder committed within the limits of such reservation."
>
> 4 Sawyer, 330.

The effect given an enabling act as to the jurisdiction of the United States Courts over offenses committed on an Indian Reservation as it might be limited by a disclaimer

of right to such lands is fully discussed in the case Draper vs. United States, 164 U. S., 244, where the Court says:

> "As equality of statehood is the rule, the words relied on here to create an exception cannot be construed as doing so, if, by any reasonable meaning, they can be otherwise treated. The mere reservation of jurisdiction and control by the United States of 'Indian Lands' does not of necessity signify a retention of jurisdiction in the United States to punish all offenses on such lands by others than Indians or against Indians."

This case approves the decision of United States vs. McBranty, 104 U. S., 622, from which the Court uses the following statement:

> "Whenever, upon the admission of a State into the Union Congress has intended to except out of it an Indian Reservation, it has done so by express words."

There is no exception in the enabling act admitting the State of Nebraska and the language is much broader than that of the Montana enabling act.

The Indians within the Omaha Reservation of Thurston County, Nebraska, being allottees, they are, therefore, citizens, and no question can arise under that part of the Act of January 30, 1897, as to selling or giving liquor to Indians. The question is wholly as to the police power or jurisdiction of the United States over the said Reservation. The question is materially answered by this Court in the case of *In re* Heff, wherein it is said:

> "Now the act of 1897 is not a revenue statute, but plainly a police regulation. It will not be doubted that an act of Congress attempting as a police regulation to punish the sale of liquor by one citizen of a State to

> another within the territorial limits of that State would be an invasion of the State's jurisdiction and could not be sustained, and it would be immaterial what the antecedent status of either buyer or seller was. There is in these police matters no such thing as a divided sovereignty. Jurisdiction is vested entirely in either the State or Nation and not divided between the two."
> *In re* Heff, 197 U. S., 489.

The act then is a police regulation and there is no divided sovereignty. This Court further cites and approves the case of the United States vs. Dewitt, 9 Wall., 41, and quotes therefrom as follows:

> "As a police regulation, relating exclusively to the internal trade of the States, it can only have effect where the legislative authority of Congress excludes, territorially, all State legislation, as, for example, in the District of Columbia. Within State limits, it can have no constitutional operation."

That the said Omaha Indians to which tribe the defendant belongs have been the objects of special legislation as to their allotments and personal status. They were allotted under the provision of the Act of Congress of August 7, 1882, 22 U. S. Stats., 341, Section 7 of which is as follows:

> "Sec. 7. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of said tribe of Indians shall have the benefit of and be subject to the laws, both civil and criminal, of the State of Nebraska; and said State shall not pass any law denying any Indian of said tribe the equal protection of the law."

This act of Congress gave the individual Indian of the Omaha Tribe of Indians the same rights and immunities as any other citizen. It granted to him his land, and with

it and over it the benefit of the laws both civil and criminal of the State of Nebraska.

The Indian then who is a voter, citizen and wholly released from Federal wardship, and subject to only the laws of the State of which he is a resident and a citizen should not be deprived of his liberty by laws that invade the State's jurisdiction. The County of Thurston, within which the Reservation lies, was organized in the year 1889, see Cobbey's Annotated Statutes, page 1518. The Indians were allotted lands, and patents issued to them in 1884, and the Act under which plaintiff in error was convicted was not passed until January 30, 1897. The enabling act, the allotments, and the organization of the County were all legal acts long prior to the act under which plaintiff in error was prosecuted, and convicted. The said act of January 30, 1897, is subsequent to all these rights of the State, the County, and the allottee.

The latest judicial announcement as to the introducing liquor into, so-called, Indian Country, is as follows:

> "The police power of the United States can only be exercised where the legislative authority of Congress excludes territorially all State legislation, and where the United States has conveyed under its land laws lands within a State ceded to it by an Indian tribe, and such lands have passed into the ownership of individuals and a municipality of the State which has been formed thereon, they are no longer subject to the provisions of Rev. St., Sec. 2139, as amended by Act Jan. 30, 1897, c. 109, 29 Stat., 506, making it an offense to introduce liquor into the Indian country; nor can that law be retained in force over such lands by agreement with the Indians in the contract or treaty of cession, the police power of the State to regulate the sale of liquor thereon being exclusive."
>
> *In re* Dick, 141 Fed., 5.

The liquor traffic is under the control and regulation of State laws. The State of Nebraska has provided punishment for the violation of its liquor laws, and the Indian citizen the same as other citizens, should be subject to only one sovereign jurisdiction and power.

The Act of Congress of January 30, 1897, in one complete act declares against the sale of liquor to Indians, and against the introducing of liquor into the Indian Country. It is the same as the laws preceding it, except that it enlarges the said acts by definition. With the exceptions named it is the identical statute as Section 2139 of the Revised Statutes, and the Act of Congress of March 15, 1864.

Chap. XXXIII. An Act to Amend an Act, Entitled "An Act to Regulate Trade and Intercourse with Indian Tribes, and to Preserve Peace on the Frontiers," Approved June 30, 1834.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That the twentieth section of the act "Act to Regulate Trade and Intercourse with Indian Tribes and to Preserve Peace on the Frontiers," approved June 30, 1834, be, and the same is hereby, amended so as to read as follows, to wit: "Sec. 20. And be it further enacted, That if any person shall sell, exchange, give, bargain, or dispose of any spirituous liquors or wine to any Indian under the charge of any Indian Superintendent or Indian Agent appointed by the United States, or shall introduce or attempt to introduce any spirituous liquor or wine into the Indian country, such person on conviction thereof, before the proper District or Circuit Court of the United States, shall be imprisoned for the period not exceeding two years, and shall be fined not more than three hundred dollars: *Provided,* however, that it shall be a sufficient defence to any charge of introducing or attempting to introduce liquor into the Indian country if it be proved

to be done by order of the War Department, or any officer duly authorized thereunto by the War Department. And if any Superintendent of Indian Affairs, Indian Agent, or Sub-agent, or Commanding Officer of the Military Post, has reason to suspect or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country in violation of law, it shall be lawful for such Superintendent, agent, sub-agent, or commanding officer, to cause the boats, stores, packages, wagons, sleds, and places of deposit of such persons to be searched; and if any such liquor be found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such persons shall be seized and delivered to the proper officer, and shall be proceeded against, by libel in the proper court, and forfeited, one-half to the informer and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bonds put in suit. And it shall moreover be the duty of any person in the service of the United States or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country except such as may be introduced therein by the War Department. And in all cases arising under this Act Indians shall be competent witnesses. Approved March 15, 1864."

13 U. S. Statutes at Large, 29.

An Act to prohibit the sale of intoxicating drinks to Indians, providing penalties therefor, and other purposes.

"That any person who shall sell, give away, dispose of, exchange or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication,

to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, AND ANY PERSON WHO SHALL INTRODUCE, OR ATTEMPT TO INTRODUCE, ANY MALT, SPIRITUOUS, OR VINOUS LIQUOR, INCLUDING BEER, ALE, AND WINE, OR ANY ARDENT OR INTOXICATING LIQUOR OF ANY KIND WHATSOEVER INTO THE INDIAN COUNTRY, WHICH TERM SHALL INCLUDE ANY INDIAN ALLOTMENT WHILE THE TITLE TO THE SAME SHALL BE HELD IN TRUST BY THE GOVERNMENT, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished by imprisonment for not less than sixty days and by a fine of not less than one hundred dollars for the first offense and not less than two hundred dollars for each offense, thereafter: *Provided, however,* That the person convicted shall be committed until fine and costs are paid."

29 Stats., 506.

This last Act of January 30, 1897, provides that the term Indian shall include allottees, and the term Indian country shall include any Indian allotment while the title to the same shall be held in trust by the Government. Aside from these enlargements there is no substantial difference, and the Act of March 15, 1864, which act is entitled an Act to Amend an Act to Regulate Trade and Intercourse with Indians, and to Preserve Peace on the Frontier.

These acts are *in pari materia* and it seems to counsel that, under whichever theory the law may be considered, it does not apply to the conditions of this case. Under the theory of regulating trade and intercourse with Indian tribes it does not apply because the defendant allottee is a citizen of the United States and not subject to such limita-

tion. Under the theory that the Indian ward of the Government should be protected against the liquor traffic we again come to the fact that the defendant allottee is a citizen and not a ward.

The Act of January 30, 1897, it seems to counsel, stands upon one or the other of these theories and can only be sustained upon ground that the Indian is a ward, or the land in question is within the exclusive jurisdiction of the United States. Neither is true in this case.

The Court has said:

> "Now the act of 1897 is not a revenue statute, but plainly a police regulation."
> *In re* Heff, 197 U. S., 505.

This statement was made in considering the sale of liquor to an Indian allottee who was a citizen. It was made after due consideration of the changed conditions of the Indians and that as citizens they were not subject to police regulations within the States concerning the liquor traffic. The theory and purpose of this Act is to protect the Indian ward, and under the authority of the United States to regulate trade and intercourse with the Indian tribes. It is a police regulation which belongs to the jurisdiction of the State of Nebraska, and which State provides a punishment of any illegal traffic in liquor within the territory described as the Omaha Indian Reservation in Thurston County, Nebraska.

The fact that the first part of the Act is declared unconstitutional in its application to citizen Indians brings into consideration what effect it has upon the remaining part thereof. The history of the Act is that the part upon which the defendant was indicted is based upon the same theory, and is an incident to the main purpose of regulating trade with the Indian tribes and protecting the wards of the Gov-

ernment. Being an incident to the main purpose it falls with it. As a police regulation of the liquor traffic it can have no effect within the boundaries of the State of Nebraska.

The principle contended for by the Solicitor-General on former hearing of this case is not denied. The United States has the power as set forth in the cases of McKay vs. Klayton (204 U. S., 458), and United States vs. Rickett (188 U. S., 436), for in those cases the State authorities by legal process were attempting to affect the title which rests in the United States Government. Where such title exists it can only be affected by the courts of the United States, and no action of the State can abridge, limit or affect the title of the United States.

The case of Camfield vs. United States (167 U. S., 518), it seems to counsel, comes nearer an expression of the principle claimed by the Solicitor-General to be involved in this case. The Court, speaking by Justice Brown, said:

> "The General Government doubtless has a power over its own property analogous to the police power of the several States, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case."

Counsel does not deny this right or power of the United States, but claims that it has no application to this case. The defendant is indicted under a law which is based upon the right of the United States to regulate trade and intercourse with Indians and to protect the wards of the Government. This Court has said:

> "In this Republic there is a dual system Government, National and State. Each within its own dominion is supreme, and one of the chief functions of this Court is to preserve the balance between them, pro-

> tecting each in the powers it possesses and preventing any trespass thereon by the other. The general police power is reserved to the States, subject, however, to the limitation that in its exercise the State may not trespass upon the rights and powers vested in the general government. The regulation of the sale of intoxicating liquors is one of the most common and significant exercises of police power. And so far as it is an exercise of the police power it is within the domain of the State jurisdiction. It is true the National Government exacts licenses as a condition of the sale of intoxicating liquors, but it is solely for the purposes of revenue and is not attempted exercise of the police power. A license from the United States does not give the licensee authority to sell liquor in a State whose laws forbid its sale, and neither does a license from a State to sell liquor enable the licensee to sell without paying a tax and obtaining the license required by the Federal Statute. *Now the act of 1897 is not a revenue statute, but plainly a police regulation.*"
>
> *In re* Heff, 197 U. S., 505.

A law which is a police regulation is not the exercise of a proprietary right of property. The law under which the defendant is indicted is not one affecting a trespass upon the land of which the Government is the owner. Neither is the defendant a trespasser upon the land. He is there as the owner of the possession and benefit while the Government holds the title for him. His being there is not adverse to the Government but in accordance with the law granting to the defendant the sole use and benefit and ultimate complete title of the land in question.

In this case the defendant is not one who is or can be charged with having indulged in the liquor traffic. He has kept liquor at his home for the same purposes that many other worthy people keep it. For reasonable use by himself and family and for a social drink with his friends. Counsel admits, however, that if the law prohibiting the

taking of liquor into the Indian country is the exercise of the proprietary right of the United States as an owner of the land, and not a police regulation of the liquor traffic, then the defendant should be held—otherwise not.

The Act of March 15, 1864, and subsequent acts, including the Act of January 30, 1897, are *in pari materia*. Construing them together, we find them to be a police regulation of the liquor traffic.

> "Sec. 43. Where there are earlier acts relating to the same subject, the survey must extend to them; for all are, for the purpose of construction, considered as forming one homogeneous and consistent body of law."
> Endlich on the Interpretation of Statutes.

The exclusion of liquor from the Indian Country was an incident in preventing the traffic with tribal Indians. There is now no such control of traffic with Indians of the class to which defendant belongs, and there is now no reason for the exclusion of liquor consistent with the intention of Congress when this act was passed. The House of Representatives Report No. 1209 shows that the sole purpose of the bill was to prevent the liquor traffic with Indians.

The right of the United States to protect its property by any regulation Congress may see fit to enact is not denied.

There is nowhere shown an intent to violate such a law or right of the United States. The distinction seems to follow the statement of this Court, by Justice Brewer:

> "There is no suggestion in the present case of a violation of an internal revenue law of the nation, but the conviction is sought to be upheld under the Act of 1897, a mere statute of police regulation."
> *In re* Heff, 197 U. S., 507.

As a police regulation the statute of January 30, 1897, is unconstitutional in its application to the defendant.

In this contention counsel for defendant desires to call attention of the Court to the fact that in the three cases before this Court at this term involving the Act of January 30, 1897, each of the plaintiffs in error is an Indian. In the State of Nebraska, ninety-seven per cent of the prosecutions are against Indians. The whites who engage in the liquor traffic, under licenses from the State and Federal Governments, enjoy the profit, and the law intended for the protection of the Indian has become the means of his oppression. The trouble with the Chippewas, of Minnesota, was traced to their prosecution under the liquor law.

To counsel it appears that in the application of the principles of protection to the Indian that he is suffering the greatest wrongs through the means provided for his protection. Not only is he subject to arrest, fines and imprisonment, under a law intended to punish white persons engaged in a debauching liquor traffic, but he is swindled of his property by some of those paid as Government employees to protect him.

The liquor traffic among the Omaha Indians is not as bad as it was some years ago, and it is due to an improvement and development among the Indians themselves.

The Omaha Indians after being citizens for twenty-one years had a Court of Indian Offences established among them. By this means they were deprived of their liberty and property and had their lives threatened. In a high-handed and arbitrary manner they were placed in jail and fined. The so-called Agent was prosecutor, Court, and executioner. This continued until the Federal Court for the District of Nebraska released an Indian by allowing a writ of *habeas corpus*, and declared the Court to be without any legal existence. The money wrongfully taken from these Indians has not been returned to them.

The Indian of to-day hedged about by rules and regulations and an unceasing end of red tape and officialdom is less a man than the old Indian who developed through the necessities of his condition. The protection has grown into burden and ripened into oppression.

It seems to counsel that twenty-three years of citizenship should bring about a position where the Indian ceases to be a special object of the law, and his rights are protected the same as other men's rights. When he shall not be over-protected.

The territory named in the indictment as the Omaha Reservation, in Thurston County, Nebraska, is a part of the Indian country which was ceded to the United States under the treaty of March 16, 1854, 10 Stats., 1043. After the cession to the United States the Omahas, being dissatisfied with the country they had reserved, selected 300,000 acres of land of the ceded country at the place known as the Blackbird Hills, which selection included country described in the indictment, and was approved by the Secretary of the Interior on the 11th day of May, 1855.

At the time the State of Nebraska was admitted into the Union the lands occupied by the Omaha tribe of Indians was not Indian country within the meaning of that term as used in the Indian trade and intercourse Act of June 30, 1834, and as since defined in the following cases: U. S. vs. LeBris, 121 U. S., 278; *Ex parte* Crow Dog, 109 U. S., 566; Bates vs. Clark, 95 U. S., 204.

At no time since the admission of the State of Nebraska has it relinquished to the United States any jurisdiction over the country occupied by the Omaha tribe of Indians.

This claim stands clearly admitted by the Solicitor General in the Government's brief filed when this case was heard by this court at the former hearing, at page 13, in the following language:

"The lands originally occupied by the Omahas, including those in question, were not excluded by any act or treaty from the jurisdiction of the State of Nebraska; consequently, upon its admission they became a part of the territory of the State and embraced within its jurisdiction.

"Langford vs. Monteith, 102 U. S., 145, 147.

"United States vs. McBratney, 104 U. S., 621, 623.

"Fort Leavenworth R. R., Co. vs. Lowe, 114 U. S., 525.

"Utah & Northwestern Railway vs. Fisher, 116 U. S., 28."

With this admission, the Act of January 30, 1897, stands alone in its application to the defendant. In the allotment Act of August 7, 1882, which was a special act in reference to the Omaha Indians, and by which the reservation was allotted and a portion sold the Omahas as a condition depending upon the allotment were made subject to the civil and criminal laws of the State of Nebraska. The Omahas were not then within the jurisdiction of any courts. The jurisdictional part is as follows:

"SEC. 7. That upon the completion of said allotments, and the patenting of the lands to said allottees, each and every member of said tribe of Indians shall have the benefit of, and be subject to, the laws, both civil and criminal, of the State of Nebraska; and said State shall not pass or enforce any law denying any Indian of said tribe the equal protection of the law."

By this Act the Omaha Indians as a tribe were made subject to the laws of the State of Nebraska and they and the territory are thereby subject to the police regulations of the State.

The Solicitor General on the former hearing, while admitting the jurisdiction of the State claims, on page 13 of

brief, the right of the Government to protect its property, stating:

> "But while this is so, it is equally well settled—and the cases cited recognize the fact—that the jurisdiction of the State over the lands of the United States within its limits is subordinate to the jurisdiction of the United States to protect its property and administer its institutions, and cannot be so exercised as to interfere with the constitutional authority of the Federal Government."

This right of the Federal Government is admitted. But it is claimed that the prosecution of a citizen under a police regulation promulgated to control the trade and commerce of Indian tribes is not within the principle growing out of the right to protect property.

In reference to the Omaha tribe of Indians the right of the Federal Government to regulate trade and commerce with tribes of Indians or the individuals thereof has ceased. With it has passed the reason and the right to control such trade and commerce by a police regulation. The reason and right to enforce such regulations has passed, and with the passing of the principle the incidents to aid and support the same have also passed. The right as owner to protect property is not the same as that to protect a people within a prescribed class. The right of the Government to protect property cannot be maintained under a statute enacted for a wholly different purpose.

To counsel for defendant it seems that without some additional legislation extending the jurisdiction of the liquor law or police regulation of January 30, 1897, so as to make it a property qualification that it fails as against this defendant and the Solicitor General admits that there is nothing.

Under these circumstances it is urged that the defendant is not within the statute. The following principle applies:

> "The elementary rule is that penal statutes must be strictly construed, and it is essential that the crime punished must be plainly and unmistakably within the Statute."
> Bellew vs. U. S., 160 U. S., 197.

> "Before a man can be punished, his case must be plainly and unmistakably within the statute."
> U. S. vs. Brewer, 139 U. S., 278.

It is the claim of the defendant that the Act of January 30, 1897, is a police regulation. That it is based wholly upon the individual status of the Indian and in no way a territorial jurisdiction standing by itself alone. The authority for the Act, its history and the decisions applying thereto confirm and establish that fact beyond a reasonable doubt.

The most comprehensive of the earlier acts of Congress in reference to the liquor traffic among Indians is that of June 30, 1834, which is generally known as the Indian Trade and Intercourse Act. Section twenty of this Act was wholly in reference to the liquor traffic with Indians and the introduction of liquor into the Indian country. By another section of the same act the Indian country was designated. The Court has said:

> "Indian country, within the meaning of Section 2139, since the Revised Statutes went into effect. * * * That section is a re-enactment in part of Section 20 of the Act of June 30, 1834, as amended by the Act of March 15, 1864. * * * The re-enacted sections are to be given the same meaning they had in the original statute, unless a contrary intention is plainly manifested."
> U. S. vs. LeBris, 121 U. S., 278.

"Section 2139, as amended and re-enacted in 1892, makes it an offense against the United States for any one to introduce intoxicating liquors into the 'Indian country,' and the offense charged against Dick was the introduction by him of whiskey into that country on the 15th day of March, 1905. * * * If this case depended alone upon the Federal liquor statute forbidding the introduction of intoxicating drinks into the Indian country, we should feel obliged to adjudge that the trial court erred in not directing a verdict for the defendant; for the statute, when enacted, did not intend by the words 'Indian country' to embrace any body of territory in which, at the time, the Indian title had been extinguished, and over which and over the inhabitants of which (as was the case of Culdesac) the jurisdiction of the State, for all purposes of Government, was full and complete."

Dick vs. U. S., No. 62, October term, 1907, page 6.

"But it is contended that although the United States may not punish under the police power the sale of liquor within a State by one citizen to another it has the power to punish such sale if the purchaser is an Indian. And the power to do this traced to that clause of Section 8, Article I, of the Constitution, which empowers Congress 'to regulate commerce with foreign nations, and among the several States, and with Indian tribes.' It is said that the commerce with the Indian tribes includes commerce with the members thereof, and Congress having the power to regulate commerce between the white men and the Indians, continues to retain that power, although it has provided that the Indian shall have the benefit of and be subject to the civil and criminal laws of the State and shall be a citizen of the United States, and therefore a citizen of the State." * * * "We are of the opinion that when the United States grants the privileges of citizenship to an Indian, it gives to him the benefit of and requires him to be subject to the laws, both civil and criminal, of the State; it places him outside the reach of police regulations on the part of Congress."

In re Heff, 197 U. S., 488.

These decisions of this Court show the source of the said Act of January 30, 1897, and the Constitutional provision upon which it stands. It is the status of the Indian, taken either collectively as a tribe or as an individual member of a tribe, that brings him within the law and the Constitutional provision upon which it rests.

The sale of liquor to an Indian, who was a ward of the Government or under the charge of an Indian Agent, has been sustained at distances remote from Indian country. This right to control, by the Federal Government, of traffic prohibited by law with Indians is not limited by any boundary, but is co-extensive with the limits of the United States, and going back to the Constitutional right and authority therefor we find it resting upon the status of Indians as tribes. The exclusion of liquor from the "Indian Territory" was and is an incident to the regulation of trade and intercourse with Indian tribes or the individual members thereof. The defendant as a tribal Indian passed out of existence with issuance to him of a patent in the year 1884, and there then was brought into being a citizen of the United States and the State of Nebraska subject fully, wholly and completely to the jurisdiction of the said State of Nebraska.

With the passing of this status of the defendant, as a tribal Indian, also passed the right of the United States to enforce police regulations against him growing out of and based upon that former status. The defendant CITIZEN is not within the Constitutional provision.

Relying upon the announcement of this Court that the Act of Congress of January 30, 1897, is purely a police regulation, and upon which the question of this case is certified, it is the conviction of counsel that it should be answered in the negative.

Respectfully submitted,

THOMAS H. SLOAN,

Attorney for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

SIMEON HALLOWELL
v.
THE UNITED STATES. } No. 89.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

Hallowell, an Indian, was convicted June 7, 1906, in the District Court for the District of Nebraska, and sentenced to pay a fine of $100 and to imprisonment for sixty days in the common jail of Douglas County in that State. The indictment, returned November 16, 1905, under the act of January 30, 1897 (29 Stat., 506), charged that on August 1, 1905, in that district he introduced intoxicating liquor into the Indian country, to wit, "into and upon the Omaha Indian Reservation, a reservation set apart for the exclusive use and benefit of certain tribes of the Omaha Indians."

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The Circuit Court of Appeals, to which the case was taken by Hallowell on writ of error, certifies that the following question of law is presented, a decision of which is indispensable to a proper disposition of the case:

> When, under the act of August 7, 1882 (22 Stat., 341), an allotment in severalty has been made to a tribal Indian out of lands in a tribal reservation in the State of Nebraska and a trust patent therefor has been issued to the allottee, and when the provisions of section 7 of the said act of August 7, 1882, and of section 6 of the act of February 8, 1887 (24 Stat., 388), have become effective as to such allottee, does the fact that the United States holds the land so allotted in trust for the allottee, or, in case of his decease, for his heirs, as provided in section 6 of the said act of August 7, 1882, enable, authorize, or permit the United States to regulate or prohibit the introduction of intoxicating liquors upon such allotment during the limited period for which the land so allotted is so held in trust by the United States?

It is stated in the certificate that at the date of the offense Hallowell was an allottee of land in the Omaha Indian Reservation, a trust patent for which had been issued to him under the provisions of the act of August 7, 1882 (22 Stat., 341), and that the twenty-five year period of the trust limitation had not expired.

The certificate further states that the reservation "had been allotted practically in whole." The

report of the Commissioner of Indian Affairs for 1905 (p. 496) gives its exact status: "129,470 acres allotted; the residue, 12,421 acres, unallotted."

All Omaha Indians entitled to allotments, either under the act of August 7, 1882 (22 Stat., 341), or its amendment of March 3, 1893 (27 Stat., 612, 630), had received them, but the reservation at the time of the crime was occupied by 1,221 Indians, under the charge of an Indian superintendent (Ann. Rep. Comm. Ind. Affairs, 1905, p. 248).

A previous certificate by the Circuit Court of Appeals in this case was dismissed, for the reason that the propositions of law involved were not stated with sufficient clearness. (*Hallowell* v. *United States*, 209 U. S., 101.)

ARGUMENT.

Since this case was certified the question involved has been settled by the decisions in *United States* v. *Sutton* (215 U. S., 291), and *United States* v. *Celestine* (215 U. S., 278).

The facts in the *Sutton* case are similar to those now presented. The defendant there was charged, under the act of 1897, with introducing liquor upon a certain allotment within the limits of an Indian reservation in Washington. The allotment there involved was held in trust by the Government and was made under the general allotment act of 1887. Allottees under that act, like those under the Omaha act of 1882, are expressly made subject to the laws, civil and criminal, of the State in which they reside. It was held that, as the Indians are wards of the Government and the beneficiaries of the prohibition against the introduction of liquor, "undoubtedly Congress has the right to forbid the introduction of liquor and to provide punishment for any violation thereof." This decision seems to dispose of the present case.

The *Celestine* case decided that, although an Indian had received an allotment and been made a citizen, the United States might retain jurisdiction and punish him for the murder of another Indian on an allotment in the reservation in a State.

The act of January 30, 1897, indicates the intention of Congress to retain jurisdiction to prohibit the introduction of liquor upon "any Indian allotment while the title to the same shall be held in trust by

the Government." The period of the trust limitation in this case had not expired in 1905, and as above shown, the reservation has not yet been entirely allotted, the Indians residing thereon still remaining in the charge of a superintendent.

The present case, therefore, is governed by both the *Celestine* and *Sutton* decisions. Like the *Celestine* case, it is an offense by one allotted citizen Indian against other Indians committed on a reservation; like the *Sutton* case, it is the introduction of liquor into an Indian reservation in which, as there held, "neither race or color are significant."

Should it be contended that the present case may be distinguished from the *Sutton* case upon the ground that "jurisdiction and control" over Indian lands has not been expressly disclaimed by the State of Nebraska, it would be sufficient to say, in answer, that such a difference is of no significance and has been disregarded by this court. There was no such disclaimer by the State of Wisconsin in the *Couture* case (207 U. S., 581), in which a judgment of conviction for introducing liquor upon an allotment in violation of the act of 1897 was affirmed. Speaking of the *Couture* decision, the court in the *Sutton* case said (p. 296):

> It is true that only a per curiam opinion was filed in that case, and the judgment was affirmed on the authority of *United States* v. *Rickert*, 188 U. S., 432; *McKay* v. *Kalyton*, 204 U. S., 458, but an examination of the record shows that its facts are similar to those in the present case.

Jurisdiction and control over the lands of Indians to which the United States holds title is a necessary consequence of its sovereignty and constitutional authority in respect both to the public lands and the Indians. Van Brocklin v. Tennessee, 117 U. S. 151.

The controlling considerations here are, first, that the United States holds the title in trust and has, therefore, jurisdiction, for the protection of the Indians, to prohibit and provide criminal punishment for the introduction of liquor upon such allotments, just as it has authority, for the protection of settlers and the general public, to prohibit trespasses upon the public lands in a State and punish any violation of its inhibitions (*Jourdan* v. *Barrett*, 4 How., 168, 185; *Gibson* v. *Chouteau*, 13 Wall., 92, 99; *Camfield* v. *United States*, 167 U. S., 518); and second, that the exercise of such jurisdiction is properly based on the guardianship of the Federal Government over the Indians and the necessity for protecting them.

The decision in *Matter of Heff* (197 U. S., 488) concerned a sale of liquor to an Indian outside the limits of the reservation, and therefore is as readily distinguished from the present case as it was from those above referred to.

Further discussion seems unnecessary, and it is respectfully submitted that the question certified should be answered in the affirmative.

For the convenience of the court the statutes, treaties, etc., bearing upon the case are appended.

WILLIAM R. HARR,
Assistant Attorney-General.

APPENDIX.

STATUTES, TREATIES, ETC.

The act of Congress of January 30, 1897 (29 Stat., 506), upon which the indictment was founded, provides:

> That any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and *any person who shall introduce or attempt to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government,* or while the same shall remain inalienable

> by the allottee without the consent of the United States, shall be punished by imprisonment for not less than sixty days, and by a fine of not less than one hundred dollars for the first offense and not less than two hundred dollars for each offense thereafter: *Provided, however,* That the person convicted shall be committed until fine and costs are paid. * * *

The Omaha Reservation was selected by the Indians with the President's approval May 11, 1855 (Ann. Rep. Comm. Ind. Affairs, 1905, p. 496), in accordance with the provisions of a treaty of March 16, 1854 (10 Stat., 1043). A later treaty, dated March 6, 1865 (14 Stat., 667), provides:

> ARTICLE IV. The Omaha Indians being desirous of promoting settled habits of industry and enterprise amongst themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe, including their half or mixed blood relatives now residing with them, to be cultivated and improved for their own individual use and benefit, it is hereby agreed and stipulated that the remaining portion of their present reservation shall be set apart for said purposes; and that out of the same there shall be assigned to each head of a family not exceeding one hundred and sixty acres, and to each male person, eighteen years of age and upwards, without family, not exceeding forty acres of land, to include in every case, as far as practicable, a reasonable proportion of

timber; six hundred and forty acres of said lands, embracing and surrounding the present agency improvements, shall also be set apart and appropriated to the occupancy and use of the agency for said Indians. The lands to be so assigned, including those for the use of the agency, shall be in as regular and compact a body as possible, and so as to admit of a distinct and well-defined exterior boundary. The whole of the lands, assigned or unassigned, in severalty, shall constitute and be known as the Omaha Reservation, within and over which all laws passed or which may be passed by Congress regulating trade and intercourse with the Indian tribes shall have full force and effect, and no white person, except such as shall be in the employ of the United States, shall be allowed to reside or go upon any portion of said reservation without the written permission of the Superintendent of Indian Affairs or the agent for the tribe. Said division and assignment of lands to the Omahas in severalty shall be made under the direction of the Secretary of the Interior, and when approved by him, shall be final and conclusive. Certificate shall be issued by the Commissioner of Indian Affairs for the tracts so assigned, specifying the names of the individuals to whom they have been assigned, respectively, and that they are for the exclusive use and benefit of themselves, their heirs, and descendants; and said tracts shall not be alienated in fee, leased, or otherwise disposed of except to the United States or to other members of the tribe, under such rules and regulations as may

> be prescribed by the Secretary of the Interior, and they shall be exempt from taxation, levy, sale, or forfeiture, until otherwise provided for by Congress

The act of August 7, 1882 (22 Stat., 341), entitled "An act to provide for the sale of a part of the reservation of the Omaha tribe of Indians in the State of Nebraska," under which the Omaha Reservation was allotted and an allotment patent issued to Hallowell, authorizes allotment by the Secretary of the Interior with the consent of the Indians of that portion of the reservation lying east of the right of way of the Sioux City and Nebraska Railroad Company, and provides:

> SEC. 6. That upon the approval of the allotments provided for in the preceding section by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indians to whom such allotment shall have been made, or in case of his decease, of his heirs, according to the laws of the State of Nebraska, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs as aforesaid, in fee discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same before the expiration of the time above mentioned, such conveyance or con-

tract shall be absolutely null and void: *Provided,* That the law of descent and partition in force in the said State shall apply thereto after patents therefor have been executed and delivered.

SEC. 7. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of said tribe of Indians shall have the benefit of, and be subject to, the laws, both civil and criminal, of the State of Nebraska; and said State shall not pass or enforce any law denying any Indian of said tribe the equal protection of the law.

SEC. 8. That the residue of lands lying east of the said right of way of the Sioux City and Nebraska Railroad, after all allotments have been made, as in the fifth section of this act provided, shall be patented to the said Omaha tribe of Indians, which patent shall be of the legal effect and declare that the United States does and will hold the land thus patented for the period of twenty-five years in trust for the sole use and benefit of the said Omaha tribe of Indians, and that at the expiration of said period the United States will convey the same by patent to said Omaha tribe of Indians, in fee discharged of said trust and free of all charge or incumbrance whatsoever: *Provided,* That from the residue of lands thus patented to the tribe in common, allotments shall be made and patented to each Omaha child who may be born prior to the expiration of the time during which it is provided that said lands shall be held in trust by the United States, in quantity and upon the same conditions, restrict-

> tions, and limitations as are provided in section six of this act, touching patents to allottees therein mentioned. But such conditions, restrictions, and limitations shall not extend beyond the expiration of the time expressed in the patent herein authorized to be issued to the tribe in common: *And provided further*, That these patents, when issued, shall override the patent authorized to be issued to the tribe as aforesaid, and shall separate the individual allotment from the lands held in common, which proviso shall be incorporated in the patent issued to the tribe: *Provided*, That said Indians or any part of them may, if they shall so elect, select the land which shall be allotted to them in severalty in any part of said reservation, either east of west of said right of way mentioned in the first section of this act.

An act of March 3, 1893 (27 Stat., 612, 630), amends the act of August 7, 1882, *supra*, by authorizing allotments "to each Indian woman and child of said tribe born since allotments of land were made in severalty to the members thereof under the provisions of said act, and now living, * * * subject to the same conditions, restrictions, and limitations provided for in sections 6, 7, and 8 of said act, touching allotments and patents to allottees therein mentioned."

The general allotment act of February 8, 1887 (24 Stat., 388), passed after the issuance of the patent to Hallowell, provides:

> SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the

> respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

By an act of May 8, 1906 (34 Stat., 182), this section was amended to read as follows:

> SEC. 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 5 of this act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may

reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made and who has received a patent in fee simple under the provisions of this act or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property: *Provided*, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: *Provided further*, That until the issuance of fee-simple

> patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States: * * *.

Exclusive federal jurisdiction of crimes upon this reservation does not appear to have been otherwise expressly reserved by any act or treaty, but the act of May 30, 1854 (10 Stat., 277), organizing the Territories of Nebraska and Kansas, provided (sec. 1):

> That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Nebraska, until said tribe shall signify their assent to the President of the United States to be included within the said Territory of Nebraska, or to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the Government to make if this act had never passed.

The act enabling the "inhabitants of that portion of the Territory of Nebraska included in the boundaries" therein designated to form a constitu-

tion and state government, approved April 19, 1864 (13 Stat., 47), provided (sec. 4):

> That said constitution shall provide, by an article forever irrevocable, without the consent of the Congress of the United States:
>
> * * * * *
>
> Third. That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the land belonging to residents thereof; and that no taxes shall be imposed by said State on lands or property therein belonging to or which may hereafter be purchased by the United States.

And the constitution adopted by the people of Nebraska provided, Article XI (Gen. Stat., Nebr., 1873, p. 66):

> SEC. 6. This constitution is formed, and the State of Nebraska asks to be admitted into the Union on an equal footing with the original States on the condition and faith of the terms of the propositions stated and specified in an act of Congress, approved April 19, 1864, authorizing the people of the Territory to form a constitution and state government, the people of the State of Nebraska hereby accepting the conditions in said act specified.

O

HALLOWELL *v.* UNITED STATES.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 89. Argued March 16, 1911.—Decided May 15, 1911.

The power of the United States to make rules and regulations respecting tribal lands, the title to which it has not parted with, although allotted, is ample. *Tiger* v. *Western Investment Co.*, *ante*, p. 286.

The mere fact that citizenship has been conferred on allottee Indians does not necessarily end the right or duty of the United States to pass laws in their interest as a dependent people; and so held that the prohibitions of the act of January 30, 1897, c. 109, 29 Stat. 506, against introduction of liquor into Indian country, are within the power of Congress.

When, under the act of August 7, 1882, c. 434, 22 Stat. 341, an allotment in severalty has been made to a tribal Indian out of lands in a tribal reservation in the State of Nebraska, and a trust patent therefor has been issued to the allottee, and when the provisions of § 7 of that act and of § 7 of the act of February 8, 1887, c. 119, 24 Stat. 388, have been effective as to such allottee, the fact that the United States holds the lands so allotted in trust for the allottee, or, in case of his decease, for his heirs, as provided in § 6 of the said act of 1882, enables, authorizes and permits the United States to regulate and prohibit the introduction of intoxicating liquors upon

such allotment during the limited period for which the land so allotted is so held in trust by the United States.

THE facts, which involve the authority of Congress to regulate the introduction of liquor into lands of allottee Indians, and the construction of provisions of the acts of August 7, 1882, and February 8, 1887, in regard to Indian allotments, and of the act of January 30, 1897, in regard to introduction of liquor into Indian country, are stated in the opinion.

Mr. Thomas L. Sloan for plaintiff in error.

Mr. Assistant Attorney General Harr for the United States.

MR. JUSTICE DAY delivered the opinion of the court.

Simeon Hallowell, plaintiff in error, was convicted in the District Court of the United States for the District of Nebraska upon the charge of having introduced whiskey into the Indian country in violation of the act of January 30, 1897, c. 109, 29 Stat. 506. After sentence, Hallowell took the case to the Circuit Court of Appeals for the Eighth Circuit, and that court certified to this court the question hereinafter set forth.

The certificate sets forth an agreed statement of facts upon which the case was tried in the District Court, as follows:

"That the defendant, Simeon Hallowell, an Omaha Indian, is and was on the first day of August, 1905, an allottee of land granted to him on the Omaha Indian Reservation, in Thurston County, Nebraska; that the allotment so made to him was made under the provisions of the act of Congress of August 7, 1882 (22 Statutes at Large, 341); that the first or trust patent was issued to him in the year 1884, and that the twenty-five year period of the trust limitation has not yet expired; and that the fee

title of the allotment so made to him is still held by the United States.

"That the defendant, Simeon Hallowell, on the first day of August, 1905, procured at a point outside the said reservation one-half gallon of whiskey which he took to his home, which was within the limits of the Omaha Indian Reservation, and upon an allotment which he had inherited and which allotment was made under the provisions of the act of Congress, of August 7, 1882, and the title of which is held by the Government, as the twenty-five year trust period has not expired. That he took the said whiskey into and upon this allotment for the purpose of drinking and using the same himself, and that he did drink said whiskey and did give some of it to his friends or visitors to drink.

"That the said Omaha Indian Reservation has been allotted practically in whole and that many of the allotments of deceased Omaha Indians have been sold to white people, under the provisions of the Act of Congress of May 27, 1902 (32 Statute at Large, 245, 275); that within the original boundary limits of the Omaha Indian Reservation, there are many tracts of land that have been sold, under the provisions of said act, to white persons who are the sole owners thereof, and that the full title to such lands has passed to the purchaser, the same as if a final patent without restriction upon alienation had been issued to the allottee.

"That all of the Omaha Indians who were living in the year 1884, and by law entitled to allotments, received them.

"That the Omaha Indian Reservation is within and a physical part of the organized territory of the State of Nebraska, as are also the allotments herein referred to, into and upon which the said defendant took said whiskey. That the Omaha Indians exercise the rights of citizenship, and participate in the County and State Government ex-

tending over said Omaha Indian Reservation, and over and upon the allotments herein referred to. That the defendant, Simeon Hallowell, has been on frequent occasions a Judge and Clerk of election, a Justice of the Peace, an Assessor, and a Director of the public school district in which he lives. That Omaha Indians have taken part in the State and County government, extending over the reservation, and have held the following offices in said county of Thurston, State of Nebraska: County Coroner, County Attorney, County Judge, Justice of the Peace, Constable, Road Overseer, Election Officers, and have also served as jurors in the county and district Courts. Defendant is self-supporting, as are most of said Indians. Some of them are engaged in business and most of them engaged in farming."

Upon this statement the Circuit Court of Appeals certified to this court the following question:

"When, under the act of August 7, 1882 (c. 434, 22 Stat. 341), an allotment in severalty has been made to a tribal Indian out of lands in a tribal reservation in the State of Nebraska, and a trust patent therefor has been issued to the allottee, and when the provisions of section 7 of the said act of August 7, 1882, and of section 6 of the act of February 8, 1887 (c. 119, 24 Stat. 388), have become effective as to such allottee, does the fact that the United States holds the land so allotted in trust for the allottee, or, in case of his decease, for his heirs, as provided in section 6 of the said act of August 7, 1882, enable, authorize or permit the United States to regulate or prohibit the introduction of intoxicating liquors upon such allotment during the limited period for which the land so alloted is so held in trust by the United States?"

Under the act of August 7, 1882, first mentioned in the certificate, provision was made for the allotment of lands in severalty among the Indians. Section 6 of the act provides in part:

"SEC. 6. That upon the approval of the allotments provided for in the preceding section by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indians to whom such allotment shall have been made, or in case of his decease, of his heirs, according to the laws of the State of Nebraska, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs as aforesaid, in fee discharged of said trust and free of all charge or incumbrance whatsoever."

As appears from the certificate upon which this case is submitted the trust period named in the section had not expired at the time the alleged offense was committed.

Section 7 of the act of August 7, 1882, provides:

"SEC. 7. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of said tribe of Indians shall have the benefit of, and be subject to, the laws, both civil and criminal, of the State of Nebraska; and said State shall not pass or enforce any law denying any Indian of said tribe the equal protection of the law."

Section 6 of the act of February 8, 1887, c. 119, 24 Stat. 388, referred to in the question propounded, provides:

"SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been

made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property."

It is apparent that at the time of the commission of the alleged offense the place wherein it was alleged to have been committed was a part of lands allotted to an Indian; that the title to the lands allotted was still held in trust by the United States for the benefit of the Indian to whom the allotment had been made; that the plaintiff in error had been declared to be a citizen of the United States, and entitled to the rights, privileges and immunities of such citizenship, and entitled to the benefit of the laws, civil and criminal, of the State of Nebraska, in which the Indian allotment was situated, and upon which the offense is alleged to have been committed.

The act under which the conviction was had was passed January 30, 1897, c. 109, 29 Stat. 506, and provides in part:

"That any person who shall introduce or attempt to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished by imprisonment for not less than sixty days, and by fine of not less than one hundred dollars for the first of-

fense and not less than two hundred dollars for each offense thereafter."

Obviously this act in terms embraced the acts stated in the agreed statement of facts, which we have set forth above. The liquor was introduced into the Indian country and into an Indian allotment, while the title to the same was still held in trust by the Government.

The contention of the plaintiff in error is that the act cannot be applied to him because at the time charged he had become a citizen and not subject to such regulation as a ward of the Government; and furthermore that the territory in question had become subject to the jurisdiction of the State of Nebraska, to whose police regulations upon the subject of the liquor traffic he was alone amenable.

When this case was certified here, *Matter of Heff*, 197 U, S. 488, had been decided, but the subsequent cases of the *United States* v. *Celestine*, 215 U. S. 278, and *United States* v. *Sutton*, 215 U. S. 291, were yet undetermined. We had occasion to consider these cases in *Tiger* v. *Western Investment Company, ante*, p. 286, and need not here repeat what was there said concerning them.

In *United States* v. *Sutton*, 215 U. S. *supra*, it was held that a conviction could be had under the act of January 30, 1897, 29 Stat., *supra*, for the offense of introducing liquor into an Indian reservation. It is true that in the *Sutton Case* the reservation was within the limits of the State of Washington, and that State had disclaimed jurisdiction over Indian lands which were to remain under the absolute jurisdiction and control of the Congress of the United States, and, it was held, that while this fact did not deprive the State of the right of punishing crimes committed on such reservation by other than Indians or against Indians (*Draper* v. *United States*, 164 U. S. 240), that where jurisdiction and control over Indian lands remained in the United States, Congress had the right to forbid the intro-

duction of liquor into such territory, and to provide for the punishment of those found guilty thereof. *Couture, Jr.* v. *United States*, 207 U. S. 581, was cited where a conviction for introducing liquor into the Indian country was affirmed.

In the case at bar, the United States had not parted with the title to the lands, but still held them in trust for the Indians. In that situation its power to make rules and regulations respecting such territory was ample. *Van Brocklin* v. *Tennessee*, 117 U. S. 151, 167; *Gibson* v. *Choteau*, 13 Wall. 92, 99; *Light* v. *United States*, 220 U. S. 523.

It is a result of the recently decided cases in this court, *Couture, Jr.* v. *United States*, 207 U. S. 581; *United States* v. *Celestine*, 215 U. S. 278; *United States* v. *Sutton*, 215 U. S. 291, and *Tiger* v. *Western Investment Company, ante*, p. 286, that the mere fact that citizenship has been conferred upon Indians does not necessarily end the right or duty of the United States to pass laws in their interest as a dependent people. A discussion of the matter in those cases renders further comment unnecessary now. Furthermore, in the present case liquor was introduced into an allotment the title to which was still held by the United States, and concerning which it had the power to make rules and regulations under the authority of the Constitution of the United States. While for many purposes the jurisdiction of the State of Nebraska had attached, and the Indian as a citizen was entitled to the rights, privileges, and immunities of citizenship, still the United States within its own territory and in the interest of the Indians, had jurisdiction to pass laws protecting such Indians from the evil results of intoxicating liquors as was done in the act of January 30, 1897, which made it an offense to introduce intoxicating liquors into such Indian country, including an Indian allotment. In this view, the question certified will be answered in the affirmative, and

It is so ordered.